Federal Court  Cour fédérale

Date: 20250924

Docket: T-2362-25

Citation: 2025 FC 1569

Ottawa, Ontario, September 24, 2025

PRESENT: The Honourable Mr. Justice Ahmed

BETWEEN:

SHAHZAD KHAN

Plaintiff

and

HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

I. Overview

[1] The Defendant, the Attorney General of Canada, brings a motion to strike the Plaintiff's claim pursuant to Rule 221(1)(a) of the *Federal Court Rules*, SOR/98-106 (the "*Rules*"). In the alternative the Defendant seeks an extension of time to file its Statement of Defence.

[2] The Defendant submits that the Plaintiff's statement of claim fails to disclose a reasonable cause of action and is an abuse of process.

[3] For the following reasons, I agree. The Defendant's motion to strike the Plaintiff's claim is granted pursuant to Rule 221(1)(a) of the *Rules*.

II. Background

[4] The Plaintiff is a Pakistani national who received refugee protection and is now a Canadian citizen.

[5] On May 29, 2019, the Plaintiff originally applied for permanent residence. On March 23, 2020, the Plaintiff remained in Canada but had a marriage by proxy to his spouse in Pakistan because he was unable to travel to Pakistan as a refugee or to a third country due to the Covid-19 pandemic.

[6] On March 16, 2020, the Plaintiff submitted an inquiry to Immigration, Refugees and Citizenship Canada ("IRCC"), requesting information about the "process to add [his] spouse to [his] application". After IRCC gave him instructions, the Plaintiff added his spouse to his permanent residence application on May 30, 2020. In his application, the Plaintiff explained that "[i]n [his] culture and religion (Islam) Nikah can be done over the phone or the groom's father, elder cousins and uncles can sign the Nikah on behalf of the groom".

[7] In a letter dated February 2, 2021, the Plaintiff received his permanent residence approval and was requested to send his spouse's documents to the overseas office in the United Kingdom. The Plaintiff re-submitted the same documents along with an explanation of the marriage by proxy on February 9, 2021.

[8] After he submitted these documents, the Plaintiff learned that marriage by proxy was not recognized by IRCC as part of the family class. The *Immigration and Refugee Protection Regulations*, SOR/2002-227 ("*IRPR*") specify that "[a] foreign national shall not be considered a member of the family class by virtue of their relationship to a sponsor […] (c.1) if at the time the marriage ceremony was conducted either one or both of the spouses were not physically present".

[9] In March 2021, the Plaintiff went to Pakistan. On April 9, 2021, he married his spouse in person. The Plaintiff remained in Pakistan for six months due to Covid-19's impact on flights and vaccinations.

[10] On September 22, 2021, the Plaintiff submitted documents showing the Nikah, and that the spouses were both present for the Marriage Registration Certificate. On September 30, 2021, the Plaintiff received a procedural fairness letter stating that his spouse was not a member of the family class because he and his spouse were not physically together for the ceremony.

[11] On January 17, 2022, the request to add the Plaintiff's spouse to his permanent residence application was refused. From January 2022 to January 2023, the Plaintiff requested various reconsiderations and appeals from this decision. From August 2021 to December 2024, the

Plaintiff and his spouse applied for visitor visas and Refugee Travel Documents, as well as seeking leave for judicial review and an order of *mandamus* at the Federal Court.

[12] On October 10, 2023, the Plaintiff applied for Canadian citizenship and became a Canadian citizen on September 24, 2024. The Plaintiff states that his spouse received a visa under a reopened permanent residence application and on December 9, 2024, became a permanent resident.

[13] The Plaintiff's underlying statement of claim seeks a number of forms of relief:

A. Declarations that the Defendant violated the Plaintiff's *Charter* rights; that the various visitor and family class sponsorship application were refused in bad faith; that the Defendant breach procedural fairness;

B. Full reimbursement for all immigration and Federal Court fees;

C. General and special damages for emotional, physical, and financial harm, as well as litigation costs;

D. An order of *mandamus* for the Defendant to process all remaining immigration matters of the Plaintiff's overseas family;

E. An order requiring the Defendant to publish a record of delays and acknowledgement of hardships as part of a policy for improvement.

III. Issues

[14] The Defendant raises two issues in this motion: whether the Plaintiff's statement of claim fails to disclose a cause of action and whether the action constitutes an abuse of process.

[15] To strike out a claim, the statement of claim must be "so clearly improper as to be bereft of any possibility of success" (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 ("*JP Morgan*") at para 47 [citation omitted]).

[16] I am mindful of the fact that striking a notice of application has a high threshold (*JP Morgan* at paras 47-48) and that cases striking such a notice "must be very exceptional" (*David Bull Laboratories (Canada) Inc v Pharmacia Inc (CA)*, 1994 CanLII 3529 (FCA) at 600). I am also mindful, however, that striking meritless actions promotes judicial economy and an expeditious determination of the case that is fair to both parties (*Onischuk v Canada (Revenue Agency)*, 2021 FC 486 at paras 2, 18).

[17] An abuse of process is a discretionary and flexible doctrine "which bars the relitigation of issues" and avoids the consequential "mischief of inconsistent decisions by different courts" (*Mancuso v Canada (National Health and Welfare)*, 2015 FCA 227 at para 40; *Lill v Canada*, 2023 FC 752 at para 11).

IV. Analysis

[18] The Defendant submits that the Plaintiff's statement of claim fails to provide the facts to support a cause of action. Specifically, the Defendant maintains that the Plaintiff fails to show the facts to support damages in the tort of misfeasance in public office, negligence, or *Charter* damages. The Defendant further submits that the Plaintiff's request for an order of *mandamus* is an abuse of process because it seeks "to circumvent the normal operation of immigration proceedings".

[19] The Plaintiff submits that he has pled sufficient facts to support a cause of action. The Plaintiff's position is that the IRCC officer's choice to process his family class application regardless of the "fatal flaw" that he was married by proxy supports his claim for damages. He further submits that the Defendant breached his *Charter* rights through a detention at the airport and the lack of recognition for proxy marriages in the *IRPR*. The Plaintiff submits that his request for an order of *mandamus* for his sister-in-law's family sponsorship application is not an abuse of process because it is forward looking.

[20] I agree with the Defendant.

[21] First, I do not find that the facts as pled show the elements required for misfeasance in public office. The IRCC officer did not commit an unlawful act when processing the Plaintiff's request to add a spouse to his permanent residence application. Applicants for permanent residence under the family class have the burden to show that they meet all requirements (*Immigration and Refugee Protection Act*, SC 2001, c 27 ["*IRPA*"], s 12(1); *IRPR*, ss 117(1)(9)).

[22] Second, I am not convinced that the statement of claim supports a finding of negligence. A negligence claim requires a duty of care between the parties, determined based on foreseeability, proximity, and policy considerations. This Court has previously analyzed the relationship between permanent residence applicants and the Crown as an immigration and refugee processing authority (*Haj Khalil v Canada (FC)*, 2007 FC 923 ("*Haj Khalil*") at paras 193, 206-207, upheld on appeal in 2009 FCA 66). In *Haj Kalil*, Justice Layden-Stevenson found that it was foreseeable for delays from the immigration authority to cause harm, including the lack of family reunification (*Haj Khalil* at para 181). That said, the lack of proximity between the parties was "insurmountable" and such a relationship would create tension between policy objectives in the *IRPA* (*Haj Khalil* at paras 188-190). The same logic applies to the case before me: there is insufficient proximity to establish a duty of care necessary for a claim of negligence. The Plaintiff submits that his case is distinguishable from *Haj Khalil* because it is "based on a completed course of conduct" rather than an "ongoing delay". However, the fundamental relationship between the parties does not change based on the alleged misfeasance.

[23] Further, the facts as pled do not establish a basis for a claim under any of the sections of the *Charter* the Plaintiff cites. The Plaintiff bases some of these claims on the eight hours during which he was held for screening in the Vancouver International Airport after he returned from Pakistan. During the screening, officers from the Canadian Border Services Agency conducted a luggage check and an interview that lasted around an hour. Given the required constellation of facts necessary to determine the rights triggered in this context, there is insufficient information about the context of the Plaintiff's detention to establish a violation of sections 7, 9, or 10 of the

Charter (*Dehghani v Canada (Minister of Employment and Immigration)*, 1993 CanLII 128 (SCC)).

[24] Section 2(a) of the *Charter* ensures everyone has "the right to entertain such religious beliefs as a person chooses, … declare religious beliefs openly …, and the right to manifest religious belief" (*R v Big M Drug Mart Ltd*, 1985 CanLII 69 (SCC) at para 94). The Plaintiff bases his claim for *Charter* damages on the "Crown's refusal to recognize the Plaintiff's religious marriage (Nikah) while demanding a second, civil ceremony". This Court has previously found that individuals in situations like the Plaintiff, who have married by proxy, have alternative mechanisms through which to sponsor their spouses (*Jahan v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 99 at paras 67-69). I am, therefore, not persuaded that the facts as pled support the Plaintiff's submissions that the Defendant in any way infringed section 2(a) of the *Charter*. Nor am I persuaded that the Plaintiff's pled facts could support a claim for *Charter* damages. Indeed, there has not been any state conduct warranting such damages, assuming the facts pled as true.

[25] Additionally, the Plaintiff's statement of claim submits that the Defendant violated his rights under section 6(2) and 8 of the *Charter*. The Plaintiff does not elaborate on these grounds in his Motion Record. Regardless, I agree with the Defendant that the Plaintiff has not pled any facts that would support a claim based on sections 6(2) or 8 of the *Charter*. Section 6(2) of the *Charter* does not have any application to these circumstances, there being no facts as pled that could support that the Plaintiff as a Canadian citizen could not move or take up residence in any province or pursue livelihood in any province. I also find that section 8 does not apply to these

circumstances, there being little-to-no evidence of any search that would trigger this *Charter* right's application.

[26] Lastly, this Court does not have jurisdiction to grant a *mandamus* in the course of an Action (*Federal Courts Act*, RSC, 1985, c F-7, s 18.1(3)). As such, I will not consider the other arguments made on the abuse of process (*JP Moran* at para 66; *Mattina v Canada (National Revenue)*, 2024 FC 1210 at para 42).

[27] Although I recognize the Plaintiff has faced uncertainty while interacting with Canada's immigration and refugee process, I do not find that his statement of claim sets out a reasonable cause of action. The Defendant's motion to strike the Plaintiff's statement of claim is granted.

[28] I will not award costs.

V. No Leave to Amend

[29] Rule 221 allows that a motion to strike may be granted with leave to amend. This is a discretionary decision (*Brink v Canada*, 2024 FCA 43 at para 41). For leave to amend to be granted, the defect in the struck pleading must be curable by amendment (*Jarbeau v Canada (Attorney General)*, 2025 FC 1287 at para 68).

[30] Here, the Plaintiff's statement of claim lacks key facts throughout that would support any of the alleged causes of action. Considering these deficiencies, I will not grant leave to amend.

ORDER

THIS COURT ORDERS that:

1. The Defendant's motion to strike out the Plaintiff's statement of claim is granted, without leave to amend.

2. No costs are awarded.

"Shirzad A."
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2362-25
STYLE OF CAUSE:	SHAHZAD KHAN v HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

MOTION TO STRIKE PURSUANT TO RULE 221(1)(A) OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	AHMED J.
DATED:	SEPTEMBER 24, 2025

WRITTEN SUBMISSIONS BY:

Shahzad Khan (On his own behalf)	FOR THE PLAINTIFF
Richard Li	FOR THE DEFENDANT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE DEFENDANT